

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) Case No. 4:17CR3089
)
Plaintiff,)
)
vs.)
)
RODNEY P. MAZZULLA,)
) Lincoln, Nebraska
Defendant.) August 1, 2018

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE JOHN M. GERRARD
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

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Proceedings recorded by mechanical stenography, transcript
produced with computer.

1 (At 10:07 a.m. on August 1, 2018; with counsel and the
2 defendant present:)

3 THE COURT: Good morning to everyone. We're on the
4 record in United States of America versus Rodney Mazzulla.
5 This is Case Number 4:17CR3089. This matter comes on for
6 sentencing with respect to Count I, which was the conspiracy to
7 distribute 50 grams or more of methamphetamine, actual;
8 Count II, possession with intent to distribute five grams or
9 more of methamphetamine, actual; and Count V, possession with
10 intent to distribute 50 grams or more of methamphetamine,
11 actual.

12 Counsel, would you please enter your appearance.

13 MS. FULLERTON: Your Honor, I'm Assistant United
14 States Attorney Sara Fullerton representing the government.

15 MR. DAMMAN: Greg Damman appearing for Mr. Mazzulla.

16 THE COURT: All right. Mr. Mazzulla is present in
17 the courtroom today.

18 The record should also reflect that the probation officer,
19 Sandra Foster, appears by telephone.

20 Are you still there, Sandra?

21 PROBATION OFFICER: Yes, sir.

22 THE COURT: Okay. Thank you for your patience.

23 Mr. Damman, may I confirm with you that you've received
24 the Revised Presentence Investigation Report dated July 5 of
25 2018 and you've gone over the report and the Sentencing

1 Recommendation with your client?

2 MR. DAMMAN: Yes, Your Honor. I have.

3 THE COURT: All right. Very well. This matter was
4 tried to a jury so there was no plea agreement in this case.

5 So that takes us back to the presentence report again.
6 There are no motions that require resolution to sentencing.
7 We'll take up the 3553(a) factors at allocution and sentencing.
8 The defendant has objected to the revised PSR.

9 Now, before we get to those objections -- there are four
10 objections -- I will advise the parties straight up that
11 obviously I was the trial judge in this particular case. I had
12 an opportunity to view the witnesses, assess credibility, and
13 with that said, the evidence supports and I will respect the
14 jury's verdict in all -- in all regards.

15 Thus, I will hear arguments of counsel this morning, but I
16 want to tell everyone we're not going to retry this case. This
17 case has been tried once. Therefore, as to some of the
18 objections, with respect to the defendant's objection with
19 regard to the firearm enhancement, I believe -- the Court
20 believes it certainly has weight. The government will have an
21 uphill climb on that particular objection.

22 On the other hand, the defendant's objections to the drug
23 quantity have an equal uphill trajectory, but I'm just stating
24 that. I will hear arguments of both counsel as to -- as to all
25 matters, but it appears to me that if there's going to be

1 further evidence or live testimony, it should be focused on the
2 obstruction of justice enhancement.

3 Now, with that said, there are four objections so let's
4 take them one at a time. The first one was the defendant
5 objected to the actual versus mixture of methamphetamine. And
6 I handled that particular objection tentatively overruling it
7 in paragraph 2(a) of my tentative findings.

8 Counsel, do you wish to argue that any further? Now,
9 first from the -- it's your --

10 MR. DAMMAN: No, Your Honor.

11 THE COURT: Okay. Anything from the government?

12 MS. FULLERTON: No, Your Honor.

13 THE COURT: All right. Then my -- my ruling -- that
14 objection will be overruled for the reasons stated in my -- on
15 page 2 of my tentative findings at paragraph 2(a).

16 With respect to the dangerous weapon or firearm, a
17 two-level enhancement, that's under Guideline Section
18 2D1.1(b)(1), I will -- I will hear any further evidence or
19 argument with -- with respect to -- to that.

20 MS. FULLERTON: Your Honor, in support of the gun
21 enhancement, I would offer Exhibit 59 and -- which is a table
22 of citations to the trial transcript and, in fact, I would
23 offer Exhibit 59 both respect to the gun enhancement and in
24 terms of the objection to weight.

25 I think with --

1 THE COURT: And I will ask, but I assume both counsel
2 are -- I was the trial judge in this case. Are both counsel
3 asking me to take judicial notice of the -- of the trial
4 record?

5 MS. FULLERTON: I am. The testimony and -- and
6 evidence, Your Honor.

7 THE COURT: Okay.

8 MR. DAMMAN: Yes, Your Honor. We'd also ask that.

9 THE COURT: All right. The Court will -- the Court
10 will do so.

11 MS. FULLERTON: And in terms of evidence on that, the
12 only other evidence I would offer is Exhibit 59 which has those
13 citations.

14 THE COURT: All right. Is there any objection to
15 Exhibit No. 59?

16 MR. DAMMAN: No, Your Honor.

17 THE COURT: All right. Exhibit No. 59 will be
18 received.

19 All right. And I'll hear argument in a moment.

20 Is there any further evidence with respect to this
21 enhancement from the -- from the defense?

22 MR. DAMMAN: No, Your Honor.

23 THE COURT: All right. I'll hear argument of the
24 government at this time.

25 MS. FULLERTON: Your Honor, I'm aware that the jury

1 found the defendant not guilty on the 924(c) count in terms of
2 possession of a firearm in furtherance of a drug crime;
3 however, what the jury was considering and what this court must
4 consider in terms of the gun enhancement are two different
5 things.

6 And I can see that there may have been concern by one or
7 more jurors that the particular guns found -- nobody linked the
8 particular guns found to any drug dealing activity; however, as
9 set out in Exhibit 59, there was testimony from two different
10 witnesses, Ms. Burke and Ms. Nemeiksis, about the defendant
11 possessing a firearm while he was dealing drugs.

12 Ms. Nemeiksis talked about a time when he delivered drugs
13 to her and he had a gun present in the truck visible to her
14 when he delivered drugs to her.

15 Ms. Burke testified in essence that he carried a handgun
16 on him every day. He was obtaining drugs every day, he was
17 dealing drugs essentially every day, and he always had a
18 handgun with him and that on at least one occasion, he used
19 that handgun to pistol-whip somebody who hadn't paid him.

20 So I think that evidence meets the preponderance standard
21 necessary to show that it was not clearly improbable that
22 particularly that firearm found in the camper with the larg---
23 larger quantity of methamphetamine on April 2nd, 2018, was --
24 it was not clearly improbable that that was connected to the
25 drug dealing activity.

1 I would remind the Court that on April 18th of 2018, this
2 is filing number 142, the Court overruled the defendant's
3 Rule 29 motion at the end of the government's case which in --
4 is a tacit finding then that the Court found there was
5 sufficient evidence on which a jury could reasonably find the
6 defendant guilty beyond a reasonable doubt of a 924(c) count.

7 The -- the burden here is preponderance of the evidence.
8 And I think we've more than met that standard and, in fact, the
9 Eighth Circuit yesterday put out an unpublished opinion, *United*
10 *States versus Gilberto Ray Ramos*, Case Number 17-3680, similar
11 circumstances to this case. In that particular one, the
12 defendant was convicted of a -- of methamphetamine dealing and
13 he was convicted of felon in possession of a firearm. That
14 possession of a firearm charge was later vacated and the matter
15 was remanded for resentencing.

16 At that point the court -- the trial court gave the
17 defendant the two-level enhancement and the evidence was
18 similar. In that case the evidence established that Ramos had
19 received and distributed methamphetamine from his two-bedroom
20 apartment in Springdale, Arkansas, and that officers who
21 searched the apartment which Ramos shared with a woman found a
22 ledger, a digital scale, baggies, cash and methamphetamine in
23 the kitchen and found a .45-caliber pistol under the mattress
24 in one of the bedrooms, the closet for which contained men's
25 and women's clothing.

1 In that case, the district judge applied the two-level
2 enhancement and the Eighth Circuit Court of Appeals found that
3 notwithstanding the sentencing court's consideration of
4 acquitted conduct, it was not unreasonable, and the Court did
5 not clearly err in imposing that enhancement.

6 Those facts are very similar to what we have from the
7 April 2nd search where that loaded pistol was found in the
8 camper near where the methamphetamine was found. And so under
9 all the circumstances, where the gun was found in respect to
10 the methamphetamine, and the fact that we have two witnesses
11 saying that this defendant carried a gun with him, a handgun,
12 when he dealt drugs, I think by the preponderance standard,
13 we've more than met that, and he should get the two-level
14 enhancement.

15 THE COURT: All right. Very well. Thank you,
16 counsel.

17 I'll hear from the defense, please.

18 MR. DAMMAN: Your Honor, just to pick up where
19 Ms. Fullerton left off in referring to the other case, I don't
20 think at all you can color match cases very easily factually as
21 far as this issue's concerned. Each case needs to be
22 determined based upon its own facts, and I think the facts in
23 this case were pretty clear that everything in the garage and
24 in the camper was in disarray, there were things everywhere.
25 This is not a gun laying out open next to drugs or

1 paraphernalia or anything like that. It was actually somewhat
2 difficult for the officers to locate it.

3 So each case has to be determined based upon its own
4 facts, and on these facts, the jury obviously found there was
5 some credibility lacking in -- in the testimony. I would say
6 probably for sure the testimony of Ms. Burke. There were
7 numerous inconsistencies in her testimony. And so I think what
8 happened was the jury found that she was really not credible on
9 her end of it.

10 I understand there's a different burden of proof or level
11 of proof, but I think it's clear that the explanation as to an
12 acquittal has to rely somewhat on her lack of credibility, if
13 not entirely.

14 And so certainly with a lesser standard, the Court could
15 disregard the -- the acquittal, but we do have an acquittal.
16 There's a jury that heard the evidence and said he's not
17 guilty.

18 As far as what the testimony was, Ms. Burke did not say
19 that she, in fact, saw Mr. Mazzulla pistol-whip anyone. If you
20 look at the precise testimony, it says it appeared as if he did
21 that. So she -- that's an indication she really didn't see
22 anything that she could testify directly to. And she made a
23 lot of assumptions and was pretty vague in her testimony. I'll
24 get into that when we start talking about quantity in some more
25 detail, but I think clearly the jury disregarded her testimony.

1 As far as Ms. Nemeiksis and her testimony that she saw a
2 firearm or handgun on the seat of a vehicle, she may have, but
3 she never saw it in his hand or never saw him ever possess it
4 in a way that would indicate it was connected to drug activity.

5 So I would suggest to the Court that the enhancement
6 doesn't apply. The acquittal, although not, you know, the be
7 all and end all on that issue, is just one of the factors, and
8 so I'd ask the Court to find that that enhancement does not
9 apply.

10 THE COURT: All right. The Court's ready to rule,
11 and I -- and, certainly, the Court does recognize that the
12 acquittal is not equivalent in -- in this case and is not
13 the -- the final answer. It is persuasive to this Court. It's
14 not binding to this Court.

15 As -- as both counsel know, I'm aware of the Eighth
16 Circuit cases, not only the one yesterday but the ones
17 previously. There is a huge battle going on in the -- in
18 the legal world, including up to the Supreme -- to the
19 Supreme Court, a case that will get there, as to whether
20 acquitted conduct could be considered by a judge, whether --
21 whether the trial judge should be an independent finder of
22 fact. At -- at this point in time in the Eighth Circuit, the
23 trial judge can.

24 I'm choosing not to be in this case. I respect the -- the
25 jury's verdict. I am not going to consider the acquitted

1 conduct, number one; but number two, more so the -- the issues
2 that have been brought up, the -- the pistol-whipping, for
3 example, the gun being in possession of Mr. Mazzulla at the
4 time that drug crimes were being committed, the gun that was
5 found on -- on April 2 which was in a chaotic disarray place in
6 the -- in his garage where -- where he was living, the jury had
7 all of that to -- to consider.

8 They obviously did not find beyond a reasonable doubt, but
9 I am finding that it was improbable that the -- that a gun or
10 those guns were connected to drug dealing activity. Therefore,
11 I will overrule -- I will sustain the objection of the
12 defendant and the enhancement will not apply as to Guideline
13 Section 2D1.1(b)(1). So that objection is sustained. As a
14 result of that, paragraphs 71, 75 and 78 in the revised PSR
15 will be adjusted.

16 Okay. Now, as to the -- the next objection is the
17 obstruction of justice, but let's go to the quantity first.
18 We'll take up the quantity and then come back to the
19 obstruction of justice.

20 All right. The government's burden and you may proceed.

21 MS. FULLERTON: Your Honor, I would submit based on
22 the testimony and evidence presented at trial as more outlined
23 in Exhibit 59 which makes references to the citation to the
24 transcript and shows more than sufficient methamphetamine to
25 support the findings made by the probation officer as to the

1 base offense level.

2 THE COURT: All right. Very well. Thank you,
3 counsel.

4 I'll hear from the defense.

5 MR. DAMMAN: Your Honor, by far the largest quantity
6 attributed to Mr. Mazzulla came from Ms. Burke, and I think
7 there's some important discrepancies to point out with regard
8 to her testimony, and probably one of the more important ones
9 would be her testimony as to Mr. Sisneroz.

10 Her testimony was that she saw Mr. Sisneroz obtain
11 methamphetamine from Mr. Mazzulla at least ten times. She
12 claimed to have known that, seen it, been personally aware of
13 it, but then not long after she testified to that, Mr. Sisneroz
14 got on the stand and he testified that he bought or obtained
15 methamphetamine from Mr. Mazzulla a total of three times. One
16 of which was on the occasion in April when Ms. Burke wasn't
17 present and he testified that he was with Travis Hizar at 1421
18 South Folsom.

19 So according to his testimony, there would have only been
20 two occasions at which he would have obtained Mr. -- or
21 methamphetamine from Mr. Mazzulla at which Ms. Burke could have
22 even possibly been present. And I don't think he even said
23 that she was.

24 But for him to come in and testify and say that it
25 happened basically on two occasions that he obtained

1 methamphetamine from Mr. Mazzulla and for Ms. Burke to testify
2 that she claimed that it was at least ten times, I think that's
3 an indication -- that's just one example of many of her
4 exaggerations. She exaggerated at least five times what
5 Mr. Sisneroz, who personally was involved in -- according to
6 his testimony in the transaction -- what he said.

7 And so I think that's kind of a benchmark. And if you
8 review the testimony, I don't think it's unreasonable to say
9 that that's kind of the extent of her exaggeration across the
10 board. And if the Court agrees with that and significantly
11 reduces her -- the quantity attributable to her testimony, I
12 think that brings the base offense level down to the level 34.
13 It drops it two levels.

14 Beyond that, she claimed that there were -- and this --
15 I'm reading from Exhibit 59, the government's calculation --
16 that over a 16-month period for four weeks, five days a week,
17 she testified that Mr. Mazzulla was going to get at least two
18 pounds from Omaha. And then their calculation shows 290.5
19 kilograms.

20 Well, if -- if you do the math, that's about 640 pounds.
21 If you go by Cassie Nemeiksis's testimony about what she was
22 paying or did pay Mr. Mazzulla for a quarter ounce or a half
23 ounce, you know, if you're at 480 -- I think her testimony was
24 that it was \$480 for a half ounce, that's about \$15,000 per
25 pound. At 290.5 kilograms, that's almost \$10 million worth of

1 methamphetamine in about a year's time. I don't see how that
2 could be credible at all.

3 I don't think there's any credible evidence that
4 Mr. Mazzulla did \$10 million worth of methamphetamine business
5 in a little over a year's time. He's living in a trailer in --
6 in a garage. And so it's things like that.

7 The exaggerations that -- they don't seem to be much when
8 you hear them in live testimony that, oh, yes, it was every
9 day, two pounds for 16 months. Well, when you really drill
10 down and get at what the meaning of that is, it just becomes
11 very hard to believe that that would be the quantity, and so --
12 given everything else they claim Mr. Mazzulla was doing in
13 addition to running a tree service.

14 So I would ask the Court to basically disregard
15 Ms. Burke's testimony if not in its entirety as far as
16 quantity, all -- nearly in its entirety. I know the Court has
17 just said that it respects the jury's verdict, but the jury
18 found the minimum or the amount that it needed to find him
19 guilty. It didn't specifically find that her testimony was
20 true.

21 So if -- if you analyze it that way, Judge, and I think
22 it's a reasonable analysis, that's -- our objection is then
23 supported.

24 THE COURT: All right. Very well. Anything further
25 from the government?

1 MS. FULLERTON: No, Your Honor.

2 THE COURT: All right. Let me say this first of all.
3 Whether this is a level 34 or level 36 makes no difference to
4 me. It's just not going to make a difference at -- at
5 sentencing.

6 So with that said, what -- what I have to do is to prepare
7 the calculations to have an appropriate advisory guideline
8 or -- as a starting point, and I will -- I will do that, but I
9 want everybody to know it just flat doesn't make a lot of
10 difference to me in this particular case, and -- and we'll
11 discuss that at the -- at the time of sentencing.

12 But with -- with that said, under Guideline Section 2D1.1,
13 that's at page 155 of the -- of the guideline book, if there is
14 at least 15 kilograms but less than 45 kilograms of
15 methamphetamine or at least 1.5 kilograms but less than 4.5
16 kilograms of meth, actual, Mr. Mazzulla falls within a total
17 offense level 36.

18 As I said before, I'm not going to retry this case. I'm
19 not going to determine who was credible and who isn't. The
20 jury has already done that.

21 And I will make a finding that the amount of
22 methamphetamine, if it was not 30 kilograms -- and -- and
23 even if I were to disregard substantial portions of Shawndell
24 Burke's testimony, it's still going to be well over 15
25 kilograms but less than 45 kilograms of -- of methamphetamine.

1 So for those reasons, I will overrule the defendant's
2 objection as to the content or amount of methamphetamine. So
3 total offense level 36 will stand as far as the advisory
4 guidelines and the starting point.

5 All right? Now we're to the objection -- so in case I
6 didn't say it, that objection is overruled so -- all right?

7 Now we're to the last objection and that is the two-level
8 enhancement for obstruction of justice under Guideline Section
9 3C1.1. The government's burden.

10 MS. FULLERTON: Yes, Your Honor. The government
11 would offer Exhibits 60, 61, 62, 63 and 64. 60, 62, 63 and 64
12 are all Saline County Incident Reports from the Saline County
13 Jail. Exhibit 61 is a U.S. Marshals' report dated April 12th,
14 2018.

15 THE COURT: All right. Are there any objections to
16 Exhibits Nos. 60, 61, 62, 63 and 64?

17 MR. DAMMAN: The only objection I have, Your Honor,
18 is to Exhibit 64 and the reason is that that's a report on an
19 incident dated April 29, 2018. It's after the jury verdict and
20 I don't believe that conduct occurring after the jury verdict
21 could -- could or should be considered to have obstructed
22 justice.

23 The verdict had been rendered, sentencing may or may
24 not have been an issue, but quantity -- I mean, the quantity
25 was addressed at the trial. Whether quantity would be a

1 sentencing issue or -- as we can see today or -- we're not
2 retrying that, so I don't know how he could have obstructed
3 after the jury trial so that -- other than that I don't object
4 to the others.

5 THE COURT: So that was as to Exhibit No. 64?

6 MR. DAMMAN: Yes, Your Honor.

7 THE COURT: All right. No objections having been
8 heard with regard to Exhibits 60, 61, 62 and 63, those four
9 exhibits are received. The objection as to Exhibit No. 64 is
10 overruled. Under Guideline Section 3C1.1, what I will be
11 considering is whether the defendant obstructed or attempted to
12 obstruct the administration of justice with regard to either
13 the prosecution or the sentencing in this case and the
14 sentencing is occurring today.

15 So any obstructive behavior, whether it was back in April,
16 at the time of trial or prior to trial or after the trial and
17 before this sentencing, will be considered. And so Exhibit
18 No. 64 will be received.

19 And as to Exhibits 60, 61, 62, 63 and 64, I will obviously
20 be hearing live testimony also. I will give them the weight to
21 which they are due after hearing the testimony and the evidence
22 today. Okay? So those exhibits are received.

23 MS. FULLERTON: And the government would call James
24 Sisneroz.

25 THE COURT: All right. Mr. Sisneroz then.

1 Counsel, while they're bringing Mr. Sisneroz, I will
2 advise, I do have a sentencing with a TIP interpreter from out
3 of state at eleven o'clock which will probably take about 15
4 minutes or so. If we are not completed with the testimony,
5 we're going to take a break at 11 for that particular
6 sentencing and then we will continue as long as we need to on
7 this proceeding.

8 MR. DAMMAN: Okay.

9 THE COURT: Mr. Sisneroz, if you'll have a seat,
10 please.

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. I believe you've already
13 called the witness, but please call him again and we'll have
14 him sworn.

15 MS. FULLERTON: The government calls James Sisneroz.

16 THE COURT: All right. Mr. Sisneroz, we'll have you
17 sworn in.

18 THE WITNESS: Okay.

19 COURTROOM DEPUTY: Please state and spell your name
20 for the record.

21 THE WITNESS: James Sisneroz. J-a-m-e-s
22 S-i-s-n-e-r-o-z.

23 COURTROOM DEPUTY: Please raise your right hand.

24 JAMES SISNEROZ, PLAINTIFF'S WITNESS, SWORN

25 THE COURT: All right. Very well. You may inquire.

1 DIRECT EXAMINATION

2 BY MS. FULLERTON:

3 Q. Mr. Sisneroz, you testified in the trial of this matter
4 against Mr. Mazzulla; is that right?

5 A. That's correct.

6 Q. And on the -- And you testified on April 18th of 2018?

7 A. Yes.

8 Q. And when you were -- were you returned then to the Saline
9 County Jail at the end of the court day?

10 A. I was.

11 Q. And when you were returned to the Saline County Jail after
12 court on that day, did you have occasion to see Mr. Mazzulla?

13 A. We did in the booking area.

14 Q. Okay. Of the Saline County Jail?

15 A. At Saline County, yes.

16 Q. And what happened at that point?

17 A. I was in a holding tank, and Mr. Mazzulla came in and told
18 the staff that I'd lied in the trial, and then he said that --
19 they dressed him out, and he saw me in the holding tank, and
20 then he asked me, "How does it feel to be a rat now that you're
21 a snitch," and -- and -- and then they removed him out of the
22 area. They took him to his pod.

23 Q. Okay. And were there any other inmates around at this
24 time?

25 A. It was just me, CO Kalkwarf, and CO Kalkwarf had reported

1 it to CO Chrans, and Chrans wrote a report, and they gave it to
2 the marshals the next day when we came back.

3 Q. Okay. And after that incident on April 18th, did you have
4 additional contacts with Mr. Mazzulla?

5 A. Yeah, Mr. Mazzulla was in C-pod. I was in -- or he was in
6 D-pod. I was in the E-pod.

7 THE COURT: What dates are we talking? Is this
8 after --

9 THE WITNESS: This is Jan- -- this is the -- this
10 would be the 22nd of April, I believe.

11 BY MS. FULLERTON:

12 Q. A few days after --

13 A. Afterward.

14 Q. -- you testified?

15 A. Yes.

16 Q. Okay. So you're still in the Saline County Jail.

17 A. Yes, still in Saline County Jail. And there's a -- an
18 inmate had got -- Troy Mason they said got jumped by
19 Mr. Mazzulla and another inmate named Kansas that I know him
20 by, so they pulled him out of the cell.

21 Our cell -- our pod has a big window, and he walked by it,
22 and he said that -- I was in the window, and he said that,
23 "We're going to jump you, we're going to get you too."

24 Q. And who is -- who is -- you said he'd said this --

25 A. Rodney Mazzulla walked by the window and said that he was

1 going to jump me, that he would get me when he walked past the
2 window when the sheriffs took him out --

3 Q. Okay.

4 A. -- because they -- they had just got done jumping Troy
5 Mason.

6 Q. All right. And Troy Mason is another inmate at Saline
7 County?

8 A. Yes.

9 Q. Okay. Did you have any other incidents with Mr. Mazzulla
10 since April 22nd or thereabouts?

11 A. Just recently Rodney Mazzulla came back from CCA. They --
12 He was in the booking area. They were booking him back in.

13 THE COURT: Again, when you say "recently", what
14 date are we talk- -- are we talking the last week or what?

15 THE WITNESS: It was -- He came back two weeks ago,
16 I believe. And they were moving -- we were -- we were in the
17 rec area, our pod, and we came out to go back to our pod. We
18 have to pass through booking. Rodney was in booking. CO
19 Johnson had told me that Rodney could be up there and don't say
20 anything. I said okay.

21 So we came through and he was up there getting booked back
22 in from CCA. He's like -- he turned and looked at me and said,
23 "Hey, you bitch snitch," and CO Fakar (phonetic) came out from
24 behind the desk and then escorted him into a holding cell, that
25 way we could pass -- I could pass by so that way he wouldn't

1 try to do anything to me.

2 BY MS. FULLERTON:

3 Q. Okay. Any other encounters with Mr. Mazzulla?

4 A. Just this morning. I mean --

5 Q. What happened this morning?

6 A. He came -- he was in the window, and he was like, so
7 how's -- he said, "This is where you hold the rats." He said,
8 "That guy's a snitch right there." Just calling me out as --
9 because I testified on him.

10 Q. And this was at Saline County?

11 A. And this was at Saline County this morning.

12 Q. Okay. You see Mr. Mazzulla in the courtroom?

13 A. I do.

14 Q. Could you point to him and describe what he's wearing.

15 A. He's wearing orange. He's right there (indicating).

16 Q. Sitting at the defense table?

17 A. Sitting next to his attorney.

18 MS. FULLERTON: I'd ask the record reflect the
19 witness has identified the defendant.

20 THE COURT: The record will so reflect.

21 MS. FULLERTON: No further questions.

22 THE COURT: All right. Cross-exam.

23 CROSS-EXAMINATION

24 BY MR. DAMMAN:

25 Q. Mr. Sisneroz, as to this April 18th incident that you

1 testified to, you said it was in a holding tank; is that right?

2 A. What's that?

3 Q. You said it was in a holding tank --

4 A. I was --

5 Q. -- that this occurred?

6 A. I was in a holding tank.

7 Q. Okay. So what's a holding tank? Is it a small cell with
8 a door with a window in it?

9 A. Yeah.

10 Q. Okay. So you were locked in by yourself in a room and
11 there was just a window there, correct?

12 A. Yeah.

13 Q. Okay. So none of this interaction that you testified
14 about in that incident was personally face-to-face. It would
15 have been through that window; would that be correct?

16 A. Well, the door -- the door was cracked open. They didn't
17 shut it, but, I mean, yeah, I was still behind a window.

18 Q. Okay. And how far away was Mr. Mazzulla from you?

19 A. We were, like, five feet away.

20 Q. And did he have a corrections officer near him?

21 A. Yeah, because he was just getting dressed out.

22 Q. Okay. Did you have a corrections officer near you?

23 A. He was like -- he would have been in between us basically.

24 Q. Okay. So this would have been with a corrections officer
25 but --

1 A. Yeah.

2 Q. -- standing between the two of you?

3 A. Yeah.

4 Q. And were there other corrections officers in the area?

5 A. Kalkwarf was the only one there at this time.

6 Q. Any other inmates in that area?

7 A. I don't believe so.

8 Q. So can you estimate the entire period of time this
9 incident would have lasted in seconds or minutes?

10 A. Seconds.

11 Q. Okay. Then you testified to another incident I think you
12 said April 22nd; is that correct?

13 A. I'm not sure of the exact date, but somewhere around
14 there, yeah. It wasn't long after the trial.

15 Q. Do you know if there was a report prepared of that
16 incident?

17 A. I -- I had -- my attorney has two reports on it so...

18 MR. DAMMAN: Your Honor, could I approach the
19 witness?

20 THE COURT: You may.

21 BY MR. DAMMAN:

22 Q. Mr. Sisneroz, I just handed you Exhibit 64. I'd ask you
23 to take a look at that exhibit and just, first of all, let me
24 know does that appear to you to be the same document that you
25 just testified to that you believe your attorney had provided

1 to you?

2 A. If you're asking me -- I've -- I've never actually saw the
3 incident report so...

4 Q. But you've read Exhibit 64 or at least you started to read
5 it, correct?

6 A. Yeah, I haven't completed finished reading it --

7 Q. Okay.

8 A. -- but you want me to read it all?

9 Q. Well, just for now can you tell me from what you've read
10 does Exhibit 64 appear to you to be documentation about --

11 A. Yes.

12 Q. -- what you testified to?

13 A. Yes.

14 Q. Okay. And I think you said in your direct examination
15 that -- and maybe it was Ms. Fullerton who said this -- that it
16 was April 22nd?

17 A. I'm not for sure of the correct date.

18 Q. Okay. So it may have been on the -- whatever date's --

19 A. The 29th.

20 Q. The 29th.

21 A. Yeah.

22 Q. Of April.

23 A. Because I had a kite that was faxed to the U.S. Marshals
24 about it also.

25 Q. So you haven't had a chance to review Exhibit 64 to see

1 whether it fairly and accurately represents what happened with
2 that --

3 A. This is the first time I've seen it --

4 Q. Okay.

5 A. -- so...

6 Q. Would you finish reviewing it --

7 A. Okay.

8 Q. -- and then let us know.

9 A. (Witness reviewing the document.) Yeah, this is --

10 Q. So after having reviewed --

11 THE COURT: Mr. Sisneroz, what I want you to testify
12 to is what you know and what you remember. I don't care what
13 somebody else wrote.

14 THE WITNESS: Okay.

15 THE COURT: Counsel can ask you about that in just a
16 moment, but I want you to testify to what you know and what you
17 remember.

18 You may proceed -- just a moment. You may proceed,
19 counsel.

20 BY MR. DAMMAN:

21 Q. Mr. Sisneroz, you testified that on this April 29th
22 incident at the Saline County Jail, there were some words back
23 and forth about jumping someone.

24 A. Where it says that he passed the E-pod, which I wasn't --
25 that's where I was, in E-pod. It said that he was -- that I

1 testified to where he was calling us snitches, and that's when
2 he'd yelled out that he was going to jump me too.

3 Q. When you were -- when this happened, was there glass
4 between you --

5 A. Yeah.

6 Q. -- as there was in the first incident?

7 A. Yes.

8 Q. Okay. And in the Saline County Jail, is it true that
9 inmates will receive write-ups if they misbehave?

10 A. Yeah.

11 Q. And that's all documented?

12 A. Mm-hmm.

13 Q. Yes?

14 And, for example, a threat or an assault would result in a
15 write-up at the Saline County Jail, wouldn't it?

16 A. Yeah, for the most part. It just depends. Because I
17 asked if they were going to write a report on when he came from
18 CCA the time that -- just recently when I was in booking, and
19 they said that they weren't going to because they were in the
20 wrong because they weren't -- they weren't supposed to be
21 moving us anyways when somebody was out in the booking area, so
22 I know a report didn't get written up then.

23 Q. You also testified to some interactions with Mr. Mazzulla
24 after court. Did that occur in this building?

25 A. That was back when we went to -- in Saline County in the

1 booking area.

2 Q. Okay. And when you say "booking area", was it the same as
3 that first incident about --

4 A. Yes.

5 Q. -- with you in a holding cell?

6 A. Yes.

7 Q. Were you in the -- in there with the door closed?

8 A. The door was cracked open, but, I mean, I was still behind
9 the -- inside a room, the...

10 Q. And --

11 A. But they were dressing us out, and when they dress us out,
12 they usually leave the doors cracked open so the next person
13 can go in.

14 Q. So were there -- Were there multiple corrections officers
15 on that occasion?

16 A. There was only one that I know. That was Kalkwarf.

17 Q. Did you yell back any profanities or anything?

18 A. No.

19 Q. Then you testified -- well, let me clarify it. Is that
20 what you testified to about the two weeks ago incident?

21 A. Yeah.

22 Q. Okay. And Mr. Mazzulla used the word snitch? He
23 called -- basically, he called you a snitch, correct?

24 A. Right, a rat, snitch.

25 Q. That's pretty common, isn't it, among the inmates at

1 Saline County Jail to talk about snitches and refer to other
2 people as snitches, isn't it?

3 A. It just depends on who you're with or where you're around.

4 Q. It's not the first time you've heard that, is it?

5 A. No.

6 MR. DAMMAN: Your Honor, could I have just a moment
7 to look at an exhibit?

8 THE COURT: You may.

9 BY MR. DAMMAN:

10 Q. On the April 18th, 2018, incident --

11 THE COURT: Are we talking July 18 or April 29?

12 MR. DAMMAN: April -- What did I say?

13 THE COURT: You said April 18. Are you talking about
14 April 29?

15 MR. DAMMAN: Well, I believe there was testimony to
16 an April 18th incident during --

17 THE COURT: Oh, okay.

18 MR. DAMMAN: -- during the trial.

19 THE COURT: Very well. You may proceed.

20 BY MR. DAMMAN:

21 Q. Have you seen the report from that incident?

22 A. I haven't seen it, but my attorney has it, he said.

23 Q. Okay. You're aware, aren't you, that in that report it
24 says that you yelled back at Mr. Mazzulla and exchanged -- the
25 two of you exchanged profanities towards each other? Isn't

1 that what happened?

2 A. I may have. I'm not for sure. But -- but I was told not
3 to say anything and -- you know, so I just remember not saying
4 much at all.

5 Q. So your earlier testimony that you didn't say anything,
6 that really wasn't true. You may have and...

7 A. You know what, it was -- what was said in that -- that I
8 had lied in -- in testimony. I told him that, "I didn't lie
9 about shit." But the -- the exchanging the words, that's what
10 was -- the exchanging the words, that were never -- not that --
11 because he was threatening me.

12 I had told him that I didn't lie when I was -- when --
13 because he said that I lied in trial, and I said, "I didn't lie
14 about shit when I was on the stand."

15 Q. So it was an angry exchange about whether you lied or not?

16 A. Yeah, it could be, yeah.

17 Q. Okay.

18 MR. DAMMAN: No further questions.

19 THE COURT: Very well. Anything further from the
20 government?

21 MS. FULLERTON: Just real briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. FULLERTON:

24 Q. Mr. Sisneroz, as a person who's incarcerated, does it
25 concern you if you get labeled as a snitch?

1 A. Yeah.

2 Q. And why?

3 A. Just because -- I mean, there are people who have ties --
4 people who know people, you know. And, you know, it's -- it
5 can be an ugly game. You know, it can be ugly.

6 Q. Okay.

7 A. It can be dirty so...

8 Q. Does it cause you to fear potentially for your safety in
9 the future?

10 A. Yeah, it does. I mean, I'm -- now that, like,
11 potentially I'm labeled as a rat or a snitch or whatever, you
12 know.

13 Q. And when Mr. Mazzulla said he was going to jump on you,
14 what did you understand him to mean?

15 A. That him or his people -- you know, they would get word to
16 somebody that, you know, knows somebody that they know and
17 eventually that they would attack me or -- possibly there or in
18 prison, because all they have to do is send an email from
19 prison to prison, and they can get word that somebody told, and
20 I could potentially get stabbed.

21 MS. FULLERTON: All right. No further questions.

22 THE COURT: All right. Very well. May this witness
23 be excused?

24 MS. FULLERTON: Yes, Your Honor.

25 THE COURT: All right. You may step down.

1 I'll ask the marshal are these two individuals and the
2 other individuals testifying today, are they separated?

3 DEPUTY MARSHAL: Yes, Judge.

4 THE COURT: Okay. Very well. Keep -- make sure that
5 that -- that continues.

6 Okay. Thank you. You may step down.

7 It's about five minutes until 11. We have to get the TIP
8 interpreter on the -- on the line.

9 Mr. Molsen, we're going to take up the eleven o'clock
10 sentencing right at 11. We're going to take a brief recess and
11 we will reconvene. If counsel would be ready -- we should be
12 ready at about 15 minutes after 11.

13 All right. But for this proceeding, we stand in recess at
14 this time. Thank you.

15 (Recess taken at 10:55 a.m.)

16 (At 11:17 a.m. on August 1, 2018; with counsel and the
17 defendant present:)

18 THE COURT: All right. We're back on the record in
19 United States of America versus Rodney Mazzulla. I think we
20 had just broke with the first witness.

21 The government may call its next witness.

22 MS. FULLERTON: Your Honor, the government calls
23 Shawndell Burke. I've asked the marshals to bring her in.

24 THE COURT: All right. Very well. You may do so.

25 All right, Miss Burke, if you'd take a seat at the witness

1 stand, I'll have you sworn in, but first let's recall the
2 witness, if you would.

3 MS. FULLERTON: The government calls Shawndell Burke.

4 THE COURT: All right. Miss Burke, we'll have you
5 sworn in at this time.

6 COURTROOM DEPUTY: Please state and spell your name
7 for the record.

8 THE WITNESS: Shawndell Burke. S-h-a-w-n-d-e-l-l,
9 and Burke, B-u-r-k-e.

10 COURTROOM DEPUTY: Please raise your right hand.

11 SHAWNDELL BURKE, PLAINTIFF'S WITNESS, SWORN

12 THE COURT: All right. You may proceed, counsel.

13 MS. FULLERTON: Yes.

14 DIRECT EXAMINATION

15 BY MS. FULLERTON:

16 Q. Ms. Burke, back in November of 2017, were you in the
17 Saline County Jail?

18 A. Yes, I was.

19 Q. And were you waiting ultimately to testify in this case?

20 A. Yes, I was.

21 Q. And at that time was Rodney Mazzulla also in the Saline
22 County Jail?

23 A. Yes, he was.

24 Q. And in about the middle of November, was there an incident
25 in which Mr. Mazzulla made some statements to you?

1 A. Yes, there was.

2 Q. And could you tell the Court what happened.

3 A. I was coming down the hallway and he was in his pod, I
4 believe it was E-pod. He was slamming up against the door with
5 papers in his hand calling me a snitch, calling me a bitch,
6 slamming these papers up against the paper -- or up -- up
7 against the door screaming at me, had other people in the pod
8 hollering at me also, and then proceeded -- the -- to go down
9 the hallway with the COs, and there was other people all the
10 way down the hallway hollering at me that he had calling me the
11 same -- the same names.

12 Q. That Rodney had been calling you?

13 A. Yeah.

14 Q. Okay. And did that cause you concern?

15 A. Yeah, it did.

16 Q. And why did it cause you concern?

17 A. Because I'm going to be housed in prison, and I've got
18 to -- I've got to -- I don't know what -- you know, I don't
19 know what's going to happen to me because of the concern of
20 the -- him carrying these papers and what he's telling people
21 for my safety.

22 Q. You say "papers". Do you know what -- what -- what do you
23 mean by "papers"?

24 A. The paperwork concerning our -- our case.

25 Q. Did he have reports about what you had said about him?

1 A. Yes.

2 Q. Like your proffer interview report?

3 A. Yes. And he's showing everybody in the jail, and what
4 they're telling other people, and it's my safety that's at
5 stake.

6 Q. Okay. And did you report that to the jail officials?

7 A. Yes, I did and also to a sheriff.

8 Q. To a sheriff's deputy?

9 A. Yes.

10 Q. All right. And did you stay then at Saline County until
11 the trial in April?

12 A. No. They moved me to CCA.

13 Q. All right. Did you have any issues while you were at CCA?

14 A. No, I didn't, but on the way back, they put us together on
15 the van.

16 Q. Okay. So you were in Saline County for a while?

17 A. Yes.

18 Q. All right. When did you go to CCA?

19 A. April -- in April.

20 Q. Was it after the trial?

21 A. Oh, my goodness. I'm not sure what date the trial was.

22 Q. Okay. Were you in Saline -- were you in CCA for a while
23 and then brought back to Saline for the trial?

24 A. Yes.

25 Q. Okay. So you left Saline, went to CCA and then came back

1 to Saline; is that right?

2 A. Yes.

3 Q. And were you in Saline County for at least a couple of
4 weeks maybe before the trial?

5 A. Yes.

6 Q. Okay. And was that when they put you in the -- the van
7 with -- with Rodney to come back to Saline County?

8 A. Yeah, from CCA.

9 Q. Okay. And what happened at that time?

10 THE COURT: And what day is this? A couple weeks
11 prior to the April 16 trial?

12 THE WITNESS: No. This -- this was just --

13 BY MS. FULLERTON:

14 Q. This is right before coming back for the sentencing
15 hearing?

16 A. Yeah, for this hearing --

17 Q. Okay.

18 A. -- yeah.

19 Q. So let's -- let's go back then. You -- you had this
20 incident with Rodney in November at Saline County?

21 A. Yes.

22 Q. Did you go to CCA between that incident and the trial?

23 A. I went to CCA -- I'm not sure on the dates. I'm not
24 sure -- What date was the trial?

25 Q. If I told you it was in mid April.

1 A. Okay. I -- I was in CCA prior to -- because of the
2 incident that happened at -- at Saline County --

3 Q. Mm-hmm.

4 A. -- they took me to CCA and then brought me back --

5 Q. Okay. So --

6 A. -- for the trial.

7 Q. So at some point you went down to CCA, but you came back
8 to Saline County before the trial; is that fair?

9 A. Yes.

10 Q. Okay. And when you came back to Saline County, what, a
11 week or so before the trial?

12 A. Yes.

13 Q. All right.

14 A. Yes.

15 Q. Was Rodney also in Saline County?

16 A. Yes.

17 Q. Did you have -- did he -- did you have any interaction
18 with him at Saline County before the trial?

19 A. No. The incident was -- was before -- was before.

20 Q. Okay. All right. So then the trial happens. You
21 testified, right?

22 A. Yes.

23 Q. And then you went back to CCA?

24 A. Yes.

25 Q. And then a couple of weeks ago did you come back to Saline

1 County from CCA?

2 A. Yes.

3 Q. And was that to testify at this hearing?

4 A. Yes.

5 Q. And were you put in a van with some other inmates?

6 A. Yes, I was.

7 Q. Was Rodney Mazzulla one of those inmates?

8 A. Yes, he was.

9 Q. Was Michelle Schwab one of those inmates?

10 A. Yes, she was.

11 Q. Okay. Was there anybody else?

12 A. Another gentleman, the name of Phil. I'm not quite sure
13 of the last name.

14 Q. Did you know him from before at all?

15 A. I knew him from Grand Island, Nebraska.

16 Q. Okay. So there's four of you in the van?

17 A. Yes.

18 Q. And --

19 A. And two CO's, two --

20 Q. Two guards?

21 A. Two guards.

22 Q. All right. And so CCA is outside of Kansas City?

23 A. Yes.

24 Q. Okay. So when you're placed in the van then to come back
25 to Saline County, what happened?

1 A. Well, it started -- Michelle and I were loaded first and
2 then the two gentlemen were loaded after us. He got in the van
3 and said, "Hello, ladies."

4 Q. Is this Rodney we're talking about?

5 A. Yes, it is.

6 Q. All right.

7 A. And then he said -- I don't know, am I allowed to say
8 what...

9 Q. Did he call you some names?

10 A. Yes, he called us some names.

11 Q. Okay. What kind of names did he call you?

12 A. He called us fucking bitches. And then it was -- the trip
13 was a five-hour trip. It was a bad trip. I mean, which we
14 knew it was going to be. I mean, anybody put in that situation
15 that you testify against -- riding in a trip with people that
16 you testify against is going to be an uneasy trip.

17 Q. What happened?

18 A. We talked about the case, about charges being -- he wanted
19 us to drop -- drop our charges.

20 Q. When you say "us", who are you talking about?

21 A. Michelle and I.

22 Q. Okay. What did Rodney say to you and Michelle about --
23 about dropping charges?

24 A. He wanted us to drop our weight charges.

25 Q. Did he want you to change your testimony?

1 A. Yes, he did.

2 Q. Did he tell you to call your lawyer and recant your
3 testimony?

4 A. Yes, he did.

5 Q. Did you tell him you would do that?

6 A. I did.

7 Q. Why did you do that?

8 A. I was scared. I was scared.

9 Q. Why were you scared?

10 A. I felt bad. I was just -- By the time we got to Saline
11 County, I was ready to call my lawyer. I was -- I -- I told
12 him I would. I just -- I was scared.

13 Q. Okay.

14 A. I was scared.

15 Q. Did he threaten you during that trip?

16 A. I don't know. I was just scared. I was -- I was scared
17 enough to want to call my lawyer and change my whole testimony.

18 Q. Okay. Did he talk about a trip to Mexico?

19 A. Yes, he did.

20 Q. What did he say about that?

21 A. He said that we were going to have a trip to Mexico to get
22 married, and he said, "Now if we ever get a trip to Mexico," he
23 said, "I'm going to drown you."

24 Q. All right. And did you believe he would do that?

25 A. Yes, I do.

1 Q. Okay. And was that why you were frightened?

2 A. Yes.

3 Q. Okay. Now, when -- in terms of changing your testimony,
4 was your testimony at trial truthful?

5 A. Yes, it was.

6 Q. Okay. Do you -- did you intend to change your testimony?

7 A. No, I didn't, but I was -- I was shook up enough to where
8 I just wanted to be done with it.

9 Q. Okay. You didn't want him threatening you anymore?

10 A. No.

11 Q. And do you continue to be afraid of Mr. Mazzulla?

12 A. Yes.

13 MS. FULLERTON: I have no further questions.

14 THE COURT: Very well. Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. DAMMAN:

17 Q. Ms. Burke, with regard to the November incident in the
18 Saline County Jail, Mr. Mazzulla was not able to come
19 personally up to you and talk to you, correct, because he was
20 in another room behind a window; is that right?

21 A. Yes, he was.

22 Q. Okay. And there were a large number of guards and other
23 inmates in that area; is that correct?

24 A. There was one, one guard.

25 Q. And as far as other people saying that you were a snitch,

1 were there other people in that area against whom you
2 proffered?

3 A. No.

4 Q. Okay. And that's really the extent of it on that occasion
5 was that he yelled at you that you were a snitch and that --
6 and your -- your impression was that he was encouraging others
7 to call you a snitch; is that correct?

8 A. He was. It was very bad. I do believe that the guard
9 also filled out a statement on behalf of me.

10 Q. Well, when you say "it was very bad," what you mean is
11 there was just a lot of people yelling at you that you were a
12 snitch; is that right?

13 A. Yeah, he had the whole pod roused up.

14 Q. Okay. But he never threatened you in any way with any
15 harm or anything.

16 A. He's -- he's very -- very evil with what he does. I mean,
17 and it's every time to where I can't walk down the hallway to
18 go to the nurse's office, to go to the library, to go to law
19 library, anything. I can't go down there because the guards
20 don't want to take me down that hallway because how rowdy that
21 he gets.

22 Q. Well, he yells at you that you're a snitch.

23 A. Yeah. I shouldn't have to have that.

24 Q. Okay. Well --

25 A. And he's got the paperwork in his hand --

1 Q. But --

2 A. -- and he's got other people doing the same things.

3 Q. But what my question is, is whether he has ever
4 verbally -- or at least in November of 2017 whether he verbally
5 made any threat of harm to you?

6 A. No.

7 Q. Okay. So then you testified about a trip from CCA --

8 A. Mm-hmm.

9 Q. -- and that was just a couple of weeks ago, correct?

10 A. Yes.

11 Q. Okay. But you and Mr. Mazzulla were both at CCA for many
12 weeks and months --

13 A. Mm-hmm.

14 Q. -- prior to that, correct?

15 A. Mm-hmm.

16 THE COURT: You have to say "yes" or "no", ma'am.

17 A. Yes, sir.

18 THE COURT: Okay.

19 BY MR. DAMMAN:

20 Q. And isn't it true that at CCA there is a way that you
21 could, and you did, pound on a door or a window or something to
22 try to get Mr. Mazzulla's attention?

23 A. Yes.

24 Q. You would do that about every day, wouldn't you?

25 A. Yes.

1 Q. Okay. And, in fact, could you see him through that window
2 when you would --

3 A. Yes.

4 Q. -- pound?

5 A. Yes, I could.

6 Q. Okay. He didn't come over. You were pounding on it to
7 initiate something with him, correct?

8 A. Well, yes, sir. But it wasn't necessarily every day that
9 it was me. There were other girls that were doing it too at
10 the window, two other people.

11 Q. But you did it a lot.

12 A. There was -- there was other girls that were doing it to
13 people out there in the pod. That's a very big pod that he is
14 in. It was one of the biggest pods at CCA that he is in.

15 Q. Well, I understand that may be true --

16 A. Okay.

17 Q. -- but I'm just -- I'm asking you whether you did that on
18 many occasions.

19 A. Yes, I did do it.

20 Q. Okay. More than ten times?

21 A. On occasions I did it, yes.

22 Q. Okay. And I'm just talking, like, ten different days, for
23 example, at least that you --

24 A. At least.

25 Q. Okay.

1 A. I never threatened him though.

2 Q. Well, but you were trying to communicate with him,
3 correct?

4 A. Yes.

5 Q. Okay. And then did you make some hand signals to him on
6 occasion?

7 A. I'd wave at him.

8 Q. Okay. Did you ever make the shape of a heart with your
9 fingers?

10 A. No.

11 Q. When you would wave at him, were you waving at him to come
12 over so you could talk to him?

13 A. No.

14 Q. What was the purpose of pounding on the window and waving
15 at him?

16 A. Wave at him.

17 Q. Okay. Well, you -- because you wanted to be friendly
18 towards him?

19 A. I had no bad -- I had no bad thing to say. I wasn't
20 threatening him. And like I said, there were other girls also
21 that were -- that were waving at their friends also and talking
22 to people out there.

23 Q. So despite this incident in November of 2017 when he
24 yelled at you that you were a snitch and other people did too,
25 you were still wanting to have some sort of contact or

1 back-and-forth with him in a positive way; is that right?

2 A. I was -- yes.

3 Q. Was Michelle Schwab also in CCA with you?

4 A. Yes, she was.

5 Q. And was she housed in such a way that you and Michelle had
6 regular daily contact?

7 A. Yes.

8 Q. And did there come a time when you would have Michelle
9 wake you up so that you could go and try to get Rodney's
10 attention out on the yard or in the prison in some way?

11 A. The person whose room that we were -- that we'd knock on
12 the window, the person that he ran with was a friend of mine's.
13 The person that he ran with -- that he would run with out on
14 the yard.

15 Q. That Rodney would?

16 A. Yes, was my roommate's friend.

17 Q. Okay.

18 A. So when -- the -- regards to knocking on the window to get
19 his attention wasn't necessarily for me knocking on the window
20 to get his attention. So this is getting -- it's getting me
21 confused with my roommate. So it's not all in regards to him.

22 Q. The van ride from CCA was in a van with cages or
23 partitions in it; is that correct?

24 A. Yes.

25 Q. So when you were seated in that van, would there have been

1 a cage between you and Mr. Mazzulla or a partition?

2 A. Yes.

3 Q. Were you seated one seat in front of or behind him or
4 could you characterize the seating arrangements?

5 A. We were sitting in front and he was sitting in the back.

6 Q. Was he in the seat directly behind you?

7 A. No. Right next -- right -- right next -- right --

8 Q. To the side?

9 A. To the side of me.

10 Q. One seat back and over to the side?

11 A. Just to the side of me.

12 Q. Okay. So there was a partition down the middle?

13 A. No. No. It's just a square. It's -- it -- you got a
14 seat like this (indicating) and then a square (indicating) with
15 seats on it. So he was sitting right here (indicating) and you
16 got the square seat right here (indicating).

17 Q. Well, let me ask it this way: How many feet away from him
18 were you?

19 A. Probably two feet.

20 Q. Okay. And were there other people seated next to you and
21 to Rodney?

22 A. Michelle was sitting next to me and Phil was sitting next
23 to him.

24 Q. Was this conversation from Leavenworth to Lincoln a
25 conversation among all of you?

1 A. No. It was mainly between him.

2 Q. But Ms. Schwab and Phil would have heard the conversation?

3 A. Yes, and the guards heard it also.

4 Q. Did you ever say during the trip that you were feeling
5 uncomfortable, to report that --

6 A. It was a very uncomfortable drive.

7 Q. Well, but I'm -- I'm asking did you report that to
8 anybody?

9 A. The guards -- the guards up front knew. And, yes, I made
10 a statement to the guards that it was -- that -- when we got
11 out of there that -- and they made a report of it.

12 Q. Were you laughing and joking at some point during the trip
13 with Mr. Mazzulla?

14 A. There was -- it wasn't a laugh. It was a very
15 uncomfortable ride. It was probably the worst five hours I
16 had.

17 Q. And so you -- did you discuss various things that you
18 testified to at Mr. Mazzulla's trial?

19 A. We discussed a lot of things.

20 Q. Okay.

21 A. We discussed whatever Rodney wanted to discuss.

22 Q. Did you discuss whether or not Mr. Mazzulla knew Michael
23 Dryden?

24 A. Yes, we did.

25 Q. And the truth of that is Mr. Mazzulla doesn't know Michael

1 Dryden and never has met him.

2 MS. FULLERTON: I'm going to object on relevance,
3 Your Honor.

4 THE COURT: Yeah. Sustained. We're not going to
5 retry the case. Sustained.

6 BY MR. DAMMAN:

7 Q. You mentioned that this bothered you. You know that
8 Mr. Mazzulla is -- has never assaulted Rhonda, his wife, don't
9 you? He's never struck her.

10 MS. FULLERTON: Objection, relevance.

11 THE COURT: Overruled. I don't know whether she
12 knows or not. Overruled.

13 You can answer if you know.

14 You may answer if -- if you -- if you know.

15 THE WITNESS: Yeah, he has.

16 (An off-the-record discussion was had between the
17 defendant and Mr. Damman.)

18 THE COURT: Any further questions?

19 MR. DAMMAN: No, Your Honor.

20 THE COURT: Any redirect?

21 MS. FULLERTON: Yes, just briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. FULLERTON:

24 Q. Ms. Burke, when you were coming back to CCA -- or, I'm
25 sorry, coming back to Wilber from CCA in the van, where was

1 Mr. Mazzulla seated with respect to Michelle?

2 A. He was right directly behind her.

3 Q. Okay. And despite this cage or whatever you called it,
4 was he able to physically contact Michelle?

5 A. Yes, he was.

6 Q. What did you see him doing with respect to Michelle?

7 A. He pulled her hair.

8 Q. Okay. So he was able to touch her?

9 A. Yes, he was.

10 Q. And was he making similar comments to Michelle to the ones
11 he was making to you?

12 A. Yes, he was.

13 MS. FULLERTON: No further questions.

14 THE COURT: Very well. May this witness be excused?

15 MS. FULLERTON: Yes, Your Honor.

16 THE COURT: Just a moment. May this witness --

17 MR. DAMMAN: Can I just ask a couple follow-up
18 questions on that?

19 THE COURT: If it's in relation to the redirect and
20 that's it.

21 MR. DAMMAN: Well, it's on the hair-pulling thing.

22 THE COURT: Brief.

23 RECROSS EXAMINATION

24 BY MR. DAMMAN:

25 Q. Ms. Burke, the -- the hair pulling with Ms. Schwab, that

1 wasn't a thing done in anger, was it?

2 A. No. He was -- he pulled her hair. He -- I don't know
3 what the comment was that he made, but he reached up and pulled
4 her hair.

5 Q. It was done playfully.

6 A. Yeah. She didn't like it. She didn't like it at all. It
7 was uncalled for.

8 MR. DAMMAN: No further questions.

9 THE COURT: Very well. May this witness be excused?

10 MS. FULLERTON: Yes, Your Honor.

11 MR. DAMMAN: Yes, Your Honor.

12 THE COURT: You may step down and you are excused,
13 Miss Burke, thank you.

14 THE WITNESS: Thank you.

15 THE COURT: The government may call its next witness.

16 MS. FULLERTON: The government would call Michelle
17 Schwab.

18 THE COURT: Marshal, Michelle Schwab.

19 Ms. Schwab, if you would please take a seat at the stand.
20 Counsel, I'll have you recall the witness.

21 MS. FULLERTON: The government calls Michelle Schwab.

22 THE COURT: Okay. Ms. Schwab, I'm going to have you
23 sworn in in just a moment.

24 COURTROOM DEPUTY: Please state and spell your name
25 for the record.

SCHWAB - DIRECT

52

1 THE WITNESS: My name's Michelle Schwab.

2 M-i-c-h-e-l-l-e S-c-h-w-a-b.

3 COURTROOM DEPUTY: Please raise your right hand.

4 MICHELLE SCHWAB, PLAINTIFF'S WITNESS, SWORN

5 THE COURT: You may proceed, counsel.

6 DIRECT EXAMINATION

7 BY MS. FULLERTON:

8 Q. Ms. Schwab, did you testify against Mr. Mazzulla at trial?

9 A. Yes, I did.

10 Q. And prior to the trial in April of 2018, were you in the
11 Saline County Jail waiting to testify?

12 A. Yes.

13 Q. And was Rodney Mazzulla also there?

14 A. Yes.

15 Q. And did you see him from time to time?

16 A. Yes.

17 Q. And prior to trial did he say or do anything that
18 indicated to you that he knew you were going to testify against
19 him?

20 A. Yes.

21 Q. What was that?

22 A. He's on the other side of the glass, but he came by our
23 pod, and -- and my hands are down, but said, "Are you
24 testifying against me?"

25 Q. Okay.

1 A. Yes.

2 Q. Was -- Did that happen more than once?

3 A. A few times. You know, he'd just shake his head and, you
4 know.

5 Q. And look at you?

6 A. Yeah.

7 Q. All right. And so you testified against him at trial?

8 A. I did.

9 Q. And then did you go to CCA for a while?

10 A. Yes.

11 Q. And were you brought back to Wilber to testify at this
12 hearing?

13 A. Yes.

14 Q. And when did you come back from CCA to Wilber?

15 A. The best of my recollection, it was the 14th of July.

16 Q. Okay. And were you in a van?

17 A. Yes.

18 Q. And who else was in the van?

19 A. Shawndell Burke, Rodney Mazzulla and some other gentleman
20 named Phil.

21 Q. Okay. And were there a couple of guards?

22 A. The guards in the front, yeah.

23 Q. Okay. So the four of you were in this van riding back to
24 Wilber from CCA?

25 A. Correct.

1 Q. During that trip, did Mr. Mazzulla make any comments to
2 you?

3 A. Yes.

4 Q. What kind of comments did he make?

5 A. Just that we were bitches and that we had lied and that we
6 should tell the truth and that I should show him my boobs.

7 Q. Okay. And did this happen once or was this an ongoing
8 thing during the trip?

9 A. It was a long ride, yeah.

10 Q. He continued to do this?

11 A. Yeah. Yes.

12 Q. And did he want you to change your testimony from trial?

13 A. Yes.

14 Q. Did he want you to call somebody and tell them that you
15 wanted to recant your testimony?

16 A. Yes.

17 Q. What did you tell him?

18 A. That I had told the truth.

19 Q. Okay. Did you hear his comments to Shawndell Burke?

20 A. Yes.

21 Q. What kind of comments did he make to her?

22 A. The same kind of comments.

23 Q. All right.

24 A. That and then at a few more, like, sexually suggestive
25 comments toward her.

1 Q. All right. Of a -- those comments, were they in your
2 understanding him wanting to have a relationship with her or
3 were they negative type comments?

4 A. Negative.

5 Q. Okay. He was saying dirty things to her?

6 A. Yeah.

7 Q. All right. Was he also wanting her to change her
8 testimony?

9 A. Absolutely.

10 Q. And did that happen numerous times?

11 A. Yes.

12 Q. Was this a comfortable trip?

13 A. Not at all.

14 Q. All right. And at some point did he physically touch you?

15 A. He pulled my hair.

16 Q. Okay. Why -- do you know why that happened?

17 A. No. Just we were in close proximity.

18 Q. Was he sitting behind --

19 A. Yes.

20 Q. -- directly behind you?

21 A. Yes.

22 Q. And he was able to reach your hair through the cage?

23 A. Yes.

24 Q. All right. After he pulled your hair, did he say anything
25 else to you about you testifying?

1 A. Just again that the least I could do for him is to show
2 him my boobs.

3 MS. FULLERTON: Okay. No further questions.

4 THE COURT: All right. Very well. Cross-exam.

5 CROSS-EXAMINATION

6 BY MR. DAMMAN:

7 Q. Ms. Schwab, Mr. Mazzulla didn't say change your testimony.
8 He said you need to tell the truth. Isn't that what he was
9 telling you?

10 A. Yes. But I had told the truth so...

11 Q. Well, but his words to you were not "change your
12 testimony". His -- The general gist of the conversation was
13 that he felt you hadn't and he wanted you to tell the truth; is
14 that correct?

15 A. Right. He wanted me to give his version.

16 Q. Well, whatever the version of the truth is, in his mind he
17 believed you hadn't told the truth, correct?

18 A. Correct.

19 Q. Okay. And so he didn't come to you on the van and say
20 change your testimony and lie. He's -- he's wanting you to
21 tell what he believes the truth.

22 A. Correct.

23 Q. Okay. And you -- you know Mr. Mazzulla well, don't you?

24 A. No.

25 Q. Well, you know him well enough to know that he -- he has

1 some firmly held opinions --

2 A. Okay.

3 Q. -- perhaps about his case?

4 A. Sure, yes, absolutely.

5 Q. Okay. So, basically, you had a conversation about various
6 things that occurred during his trial that he believed people
7 had lied about; is that right?

8 A. Right.

9 Q. Okay. For example, with you he felt that your testimony
10 was not truthful because you had said you had received
11 methamphetamine from him, but his position was that you never
12 personally in a hand-to-hand transaction got it?

13 A. That's -- that's what he said.

14 Q. That's his problem with your testimony.

15 A. Correct.

16 Q. Okay. And he wants you to clarify it that way and to tell
17 the truth that in his opinion it never happened hand to hand,
18 the drug transaction?

19 A. That's his opinion, correct.

20 Q. Okay. And as far as Ms. Burke is concerned, you heard the
21 conversation between Mr. Mazzulla and Ms. Burke, correct?

22 A. I did.

23 Q. And it was the same thing, wasn't it? That he had certain
24 things that he felt she had not been truthful about and he
25 wanted her to tell the truth; is that right?

1 A. Right. He wanted her to tell his version of the truth.

2 Q. Right.

3 A. Correct.

4 Q. And as far as the hair thing, he really didn't pull your
5 hair. He was just kind of twirling it with his finger, wasn't
6 he? I mean, it wasn't done in anger, correct?

7 A. No, I don't think he was trying to be malicious. I think
8 he was just trying to send a message that, you know, he was
9 close.

10 Q. And the general conversation about the testimony at trial
11 from you and Ms. Burke was generally in a friendly manner,
12 wasn't it? It wasn't full of anger.

13 A. I guess it's not as angry as he can be.

14 Q. Okay. Well, other people were in the van during this
15 conversation, correct?

16 A. Yes.

17 Q. Did a guard ever say, hey, stop yelling or stop arguing or
18 being aggressive or anything like that?

19 A. No. They didn't say anything even from the beginning when
20 he called us bitches.

21 Q. So if it was getting to be an aggressive and
22 out-of-control type of conversation, they would have heard it
23 and brought it to an end, wouldn't they?

24 MS. FULLERTON: Objection, speculation.

25 THE COURT: Sustained.

1 BY MR. DAMMAN:

2 Q. Did you ever tell either of the guards on the trip there
3 that -- during the conversation or at any time that you wanted
4 to stop, you didn't want him talking to you anymore,
5 Mr. Mazzulla?

6 A. No.

7 Q. As far as Saline County's concerned, while you were there,
8 there was never any kind of threat or anything of that sort
9 made by Mr. Mazzulla towards you; is that correct?

10 A. We aren't really able to speak face-to-face at -- at
11 Saline County. It's only through the glass or, like, through
12 the vents or the walls.

13 Q. And on the trip in the van that you just testified to,
14 Mr. Mazzulla never verbally threatened harm to you in any way;
15 is that correct?

16 A. No. He never made any --

17 Q. He never said --

18 A. -- direct threat.

19 Q. -- you testified against me so I'm going to do something
20 to you. He never did anything to that effect, right?

21 A. No, nothing specific, no.

22 Q. And he didn't say anything of that sort to Ms. Burke
23 either, correct?

24 A. No. I think the only comment that he had made to her was
25 that if things would be different, they would have been going

1 to Mexico to get married. As it stands, if he got her in
2 Mexico, he would drown her.

3 Q. And he said that in a joking kind of way.

4 A. Yeah. I understand that he feels some animosity. We're
5 witnesses in a testimony -- or in a trial or whatever, but we
6 never should have been together. It was miserable.

7 Q. Pardon me?

8 A. I said we never should have been in the same van. It was
9 miserable.

10 Q. Okay. Was there ever laughing involved back and forth
11 during these conversations about the trial?

12 A. Yeah. Yeah, there was some funny things said.

13 Q. Did you laugh at the comment about if we'd have been
14 married and gone to Mexico but under the circumstances I'd
15 drown you? Did you laugh at that comment?

16 A. Yeah.

17 Q. Did Ms. Burke laugh at it too?

18 A. Yeah, I think Shawndell did.

19 MR. DAMMAN: No further questions, Your Honor.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MS. FULLERTON:

23 Q. Ms. Schwab, you said that the trip was miserable. Could
24 you tell the Court why it was miserable.

25 A. It's just uncomfortable and -- and, like, we were

1 witnesses in his trial, and him trying to change our -- make us
2 change our testimony or make me feel like I did something wrong
3 was miserable, and it's a three-and-a-half-hour trip.

4 Q. And it was continuous?

5 A. Yeah. Yeah. It was -- and it's just an uncomfortable
6 situation to -- to be in.

7 MS. FULLERTON: No further questions.

8 THE COURT: Any further questions?

9 MR. DAMMAN: No.

10 THE COURT: And from the government, I apologize that
11 you were in the same van.

12 THE WITNESS: Thank you. I appreciate that.

13 THE COURT: We'll see if that can get corrected in
14 the -- in the future regardless of what testimony is so...

15 THE WITNESS: Thank you.

16 THE COURT: May this witness be excused?

17 MS. FULLERTON: Yes, Your Honor.

18 MR. DAMMAN: Yes, Your Honor.

19 THE COURT: You may step down. Thank you.

20 THE WITNESS: Thank you.

21 THE COURT: The government may call its next witness.

22 MS. FULLERTON: The government rests on that issue,
23 Your Honor.

24 THE COURT: Very well. Defense, any testimony or
25 evidence?

1 MR. DAMMAN: We'd call Rodney Mazzulla.

2 THE COURT: All right. Mr. Mazzulla, come forward.

3 All right. Mr. Mazzulla has been called.

4 We'll place you under oath, sir.

5 COURTROOM DEPUTY: Please state and spell your name
6 for the record.

7 THE WITNESS: Rodney P. Mazzulla. R-o-d-n-e-y P.
8 M-a-z-z-u-l-l-a.

9 COURTROOM DEPUTY: Please raise your right hand.

10 RODNEY MAZZULLA, DEFENDANT, SWORN

11 THE COURT: You may proceed, counsel.

12 MR. DAMMAN: Thank you.

13 DIRECT EXAMINATION

14 BY MR. DAMMAN:

15 Q. Mr. Mazzulla, you're the defendant in this case, correct?

16 A. That's correct.

17 Q. And you were present in the courtroom for the testimony of
18 James Sisneroz, Shawndell Burke and Michelle Schwab just now?

19 A. I was.

20 Q. And with regard to Mr. Sisneroz, he testified to some
21 interactions with you at the Saline County Jail. He testified
22 as to one that occurred in a holding tank April 18th.

23 Could you describe for the Court what happened on that
24 occasion.

25 A. Yes, sir. I believe the 18th was after the trial. We was

1 returned back to the jail. Sisneroz was held in the holding
2 cell. He'd already been dressed out, I believe. They took him
3 in first anyway.

4 THE COURT: Mr. Mazzulla, why don't you face me and
5 the court reporter so we can hear you.

6 THE WITNESS: Okay. Sorry.

7 A. So -- so I come in second. They dressed me out, and when
8 I come out of the dressing room -- his cell was directly across
9 from the -- the doorway where I come out of, and I said, "How
10 does it feel to be a rat," and he said, "Fuck you," and that
11 was the end of it. The guard had shoved me down the hall and
12 put me in my jail cell.

13 BY MR. DAMMAN:

14 Q. Then did you hear Mr. Sisneroz testify to an incident that
15 was first characterized as having occurred April 22nd, but then
16 after some more testimony, it appears as if maybe it was
17 April 29th of 2018 at the Saline County Jail?

18 A. Yes.

19 Q. Okay. And what happened on that occasion?

20 A. We had a confrontation in my cellblock and -- with Troy
21 Mason. Nobody jumped him. He just wanted to be moved out of
22 that cell. And the next day -- I believe it was the next
23 day -- I was walking down past Sisneroz' cell, which is
24 right -- right beside my cellblock, and I called him a snitch.

25 And, again, we're being transported up and down the

1 hallway with a guard usually holding on to your arm, and so you
2 get about one or two words off before they snatch you down the
3 hall further and tell you to shut up. And I called him a
4 snitch and he yelled something back.

5 There's a couple other people in there that I don't get
6 along with and they all flipped me off and that was the extent
7 of it.

8 THE WITNESS: Sorry. I'm not looking at you.

9 BY MR. DAMMAN:

10 Q. Then he also testified to an incident about two weeks ago
11 in booking and -- and that -- in his testimony on that
12 incident, he said that you -- that you were in a holding cell,
13 and you said something to the effect of "this is where they
14 hold rats".

15 Is that -- Do you recall that testimony by Mr. Sisneroz?

16 A. Yes. That was this morning, I believe. That was this
17 morning.

18 Q. Well, describe what happened.

19 A. When I come -- they brung me out of my cell and -- to
20 prepare me to come to the hearing this morning, the sentencing
21 hearing here, and, apparently, they'd had him out first. I
22 didn't know he was in there.

23 And when they brought me out, they handcuffed me and
24 shackled me up and walked me down the hall to go outside, and I
25 looked in the cell and there Sisneroz was. And there's a guard

1 standing right there so that I couldn't talk to him, but I
2 said, "Oh, this must be where you hold the rats," and that was
3 the extent of that.

4 Q. Okay. Now, with regard to Mr. Sisneroz, have you ever
5 made any verbal threats of harm to him?

6 A. No.

7 Q. Have you ever directed anyone else to make any verbal
8 threats of harm to him?

9 A. No.

10 Q. Have you had a lot of generally friendly conversations
11 with him in the Saline County Jail?

12 A. Prior to his testimony, yes, we used to eat bagels
13 together and play chess together. He acted as he was my
14 friend, yes.

15 Q. Shawndell Burke testified about an incident November of
16 2017 in the Saline County Jail, said something about you
17 holding a paper up against a window.

18 What happened with that incident?

19 A. During the whole time we've been in the Saline County
20 Jail, up to this point, I wasn't aware that Shawndell was
21 proffering against me. We were held in the same cellblocks
22 adjacent to each other and we could look in the window and see
23 reflections of each other.

24 And so I would say once a week she would show me her tits
25 in the reflection. She always give me heart I love you signs,

1 stuff of this nature.

2 And then I got diagnosed with high blood pressure, and
3 they moved me from that cellblock to E wing where they could
4 monitor me on the cameras better, and then shortly after that I
5 got a copy of the proffered statement -- I keep wanting to look
6 at you but -- I got a copy of the proffered statement.

7 And so then the next time -- they take Shawndell down to
8 the nurse's station about twice a day. And so the next time I
9 seen her walk down the hallway, I yelled at her through the
10 door and said, "You are a snitch and child molester," and that
11 was the extent of that.

12 Q. She then testified to the trip here from CCA in
13 Leavenworth in a van with other persons. First let's start
14 with -- can you describe the van and who made the trip with
15 you.

16 A. Yes. Michelle Schwab and Shawndell Burke was in the front
17 part of the van. There's a partition. It's a corrugated metal
18 partition with holes in it so you can see through it and then
19 conversate through it.

20 I was in the back of the van with a Phillip Smith I think
21 is his last name. I don't know him. I just learned that since
22 the -- I've been in jail on the return trip here.

23 And there was two guards in the front. I believe they had
24 video. I'm not certain if they have recording or not.

25 Q. So as the trip progressed, did the conversation among

1 those in the van turn to your trial?

2 A. Absolutely, yes.

3 Q. And were you the one who brought up that subject?

4 A. Absolutely.

5 Q. What was your intent in bringing that up?

6 A. Well, it started immediately as soon as I entered the van.
7 I said, "Hello, ladies," probably in a sarcastic manner, I
8 imagine. Either way you can take it. And I did call them a
9 bitch.

10 Q. So --

11 A. And -- go ahead.

12 Q. Well, just to put this into context, after your trial, did
13 you believe that numerous witnesses had lied in your case?

14 A. Absolutely. Every one of them did.

15 Q. And did that bother you?

16 A. Yes.

17 Q. Did you want to solve that issue in some way?

18 A. I told -- I told Shawndell and I told Michelle -- more so
19 Michelle because she did less lying than Shawndell did, but --
20 but I told them -- I said, "You know, I get it. I understand.
21 I understand what you did. You know, you come clean, you take
22 your plea bargain. You take responsibility for your actions,
23 you get a small sentence and you go home."

24 I said but to get up on the stand and to lie against
25 somebody just trying to testify for theirselves or trying to

1 stand up for their rights, and you get up there and lie, I
2 said, that's a whole different scenario, that's a whole
3 different game, you know. I said, "Just tell the truth.
4 That's all I'm asking you to do. Just tell the truth."

5 I told Shawndell, I said, "Nobody in their right mind's
6 going to sell two pounds of dope every day for months." And
7 she said, "I didn't say that, I didn't say that," and I said,
8 "Yes, you did." Well, in the long run, she says, "Well, I'm
9 going to call my attorney and tell him that I didn't mean to
10 say it that way."

11 And Michelle -- as far as Michelle goes, she testified
12 that -- that I sold her a half a ounce of dope and she sold me
13 an eight-ball. And I said, "Well, you got part of it right.
14 You did sell me an eight-ball, but I never sold you a half."

15 "Yes, you did. Yes, you did."

16 I said, "No, I never."

17 So she explained the situation to me. She said that she
18 come to my house with Johnny, which is the guy that lived in my
19 garage, and Johnny went in the garage and come out with dope,
20 and so she assumed it come from me.

21 I said, "Well, that's not what you said on the stand. You
22 said you bought it from me." And she said, "I see your point."
23 However, she said she'd never change her testimony, that she's
24 standing on that, that she would never change it because she
25 wants her deal.

1 Q. When you used various words to -- in questioning about
2 what they said at trial, did you ever directly tell them to
3 change their testimony or did you say "tell the truth"?

4 A. I said, "Tell the truth." I never told them what to
5 change. I never told them amounts to change or any scenarios
6 like that. I said, "All I'm asking is just tell the truth."
7 "You tell the truth and I'll deal with the rest," is what I
8 told them.

9 Q. Did you ever make any threat of harm to anyone in the --
10 during that van ride?

11 A. Absolutely not. Like I said, I know we was under video.
12 I don't know if we're being recorded. I made jokes all the way
13 up here. "Turn the recording up, please." Because Shawndell
14 was admitting to lies all the way up here, and I would jokingly
15 say, "Turn the recording up so we can get this all on tape,"
16 and everybody would laugh.

17 It wasn't a stressful situation. It was a jokingly
18 situation. I told them both I understood their position. You
19 know, all I wanted them to do was tell the truth, you know. I
20 mean, anybody in their right mind knows I haven't sold
21 \$10 million worth of dope.

22 Q. With the conversation about the trip to Mexico and so
23 forth where you said that you would -- if you did go, you would
24 drown Shawndell, describe that conversation.

25 A. I told Shawndell -- Shawndell's always kind of liked me,

1 apparently. She beats on the windows, gives me heart signs.

2 She shows me her titties, she says that she loves me --

3 MS. FULLERTON: Objection, nonresponsive.

4 A. -- every time that she gets the chance. Excuse me?

5 THE COURT: Just a moment.

6 THE WITNESS: I'm explaining --

7 THE COURT: Just a moment. The objection is
8 sustained.

9 Just answer the question that he has.

10 Ask the question.

11 A. I forgot the question.

12 BY MR. DAMMAN:

13 Q. Well, the -- the contact -- the question was on the --
14 the -- the conversation about the trip to Mexico. What --
15 what -- what was said?

16 A. I told her, I said, "You know, Shawndell, we could have
17 ran off to Mexico together." And then I said, "But now if we
18 run off to Mexico, I'm going to drown you." We all laughed.
19 It was a joke. It wasn't a threat. It was a joke. And we
20 laughed and we joked about it.

21 Q. And --

22 A. I mean --

23 THE COURT: I -- I've got the answer.

24 A. Yeah, that's it.

25 BY MR. DAMMAN:

1 Q. And as far as your time with Ms. Burke in -- when you were
2 both in CCA and Leavenworth, did she appear to want to have
3 contact or conversations or some interactions with you while
4 you were there?

5 A. Absolutely.

6 Q. Okay. And in what way?

7 A. Every time she gets a chance. We see each other, she's in
8 medical, I'll go by the windows, she beats on the windows,
9 gives me the heart. That's the way they do down there, the
10 girls give you the heart sign. It means I love you.

11 Even -- She beats on the window when I run. I run every
12 day out on the track. They can look out their windows. They
13 beat on the windows. They were joking about coming up here.

14 Michelle Schwab -- because Shawndell works nights down
15 there. She's got some job, I'm not aware of what she does, but
16 she got some job, and she would have Shawn- -- Michelle come
17 down and wake her up every day so that she could look out the
18 window at me running. Because they were talking about how good
19 of shape I was in, more than everybody else out there and all,
20 and we was all laughing and joking about that.

21 Since we've been up here, Shawndell goes to the nurse's
22 station every day for her medication or something, whatever she
23 does, and she says I love you through the window every time she
24 walks by me, every time. I don't yell back at her anymore and
25 I'm done with all that, you know. It's just -- it just irks

1 me.

2 Q. Is there anything else about the testimony of these three
3 witnesses today that you would like the Court to know as far as
4 it bears on the -- your alleged obstruction of justice?

5 A. Well, it -- you know, I haven't taken the stand. I was
6 advised not to take the stand.

7 MS. FULLERTON: I'm going to object, Your Honor.
8 We're not going to refight this war.

9 THE COURT: Yeah. The objection is sustained.

10 THE WITNESS: Absolutely. You wouldn't want the
11 truth to come out, would we? That would be --

12 THE COURT: You can ask the question.

13 MR. DAMMAN: Well, Judge, I -- I guess the question
14 was limited to what these three witnesses said today --

15 THE COURT: I understand that.

16 MR. DAMMAN: -- on this obstruction issue.

17 BY MR. DAMMAN:

18 Q. And so if we limit it to that, Mr. Mazzulla, is there
19 anything else you want the Court to know?

20 A. Well, you know, they're saying that I threatened them and
21 tried to get them to change their story. I just asked them to
22 tell the truth. Michael Dryden, Shawndell doesn't know him, I
23 don't know him.

24 MS. FULLERTON: Objection, Your Honor.

25 THE COURT: Sustained.

1 MR. DAMMAN: No further questions.

2 THE COURT: Cross-examination.

3 MS. FULLERTON: No.

4 THE COURT: All right. You may step down,
5 Mr. Mazzulla.

6 THE WITNESS: Absolutely not. I wouldn't -- I
7 wouldn't cross me either.

8 MR. DAMMAN: No further evidence, Your Honor.

9 THE COURT: Very well. I'll hear argument.

10 MS. FULLERTON: Your Honor, I think the evidence more
11 than supports a finding that the defendant obstructed justice.

12 THE COURT: I'll --

13 MR. DAMMAN: Well, Your Honor, I think we see a man
14 who's passionate about his case, he feels strongly about it.
15 We all express ourselves in different ways when we have those
16 sorts of feelings and you've seen what kind of way that
17 Mr. Mazzulla -- he's a direct person. He says what's on his
18 mind and there's a difference between saying what's on your
19 mind and what you believe to have been the truth and
20 threatening someone.

21 And intent comes into play here, I think. Beyond that,
22 you know, there -- the reality is that he didn't -- nobody ever
23 came in and said he threatened harm to me. I guess the closest
24 we could get to that would be maybe Mr. Sisneroz when he said
25 the thing about getting jumped, but even that is -- under the

1 circumstances were -- it would be hard-pressed, I think, to see
2 that as some sort of imminent direct threat.

3 But it's just really unfortunate that all these folks
4 have -- had to have so much interaction, not only at trial --
5 during the months and weeks leading up to the trial, during the
6 trial, after the trial.

7 It just seems that --

8 THE COURT: I agree with you there.

9 MR. DAMMAN: -- these instances have been created --
10 or these interactions have been allowed to occur and they never
11 should have.

12 And I don't know that we should be that surprised that
13 some of these things were said because this is kind of the way
14 the game's played in the Saline County Jail and at CCA and
15 everywhere, that people accuse each other of being snitches,
16 and they do it in a different way, and I don't think it came as
17 a surprise to Ms. Schwab or Ms. Burke or Mr. Sisneroz or -- and
18 I'm -- I'm sure Mr. Mazzulla's not the only one who's ever said
19 that to them.

20 So I -- I -- I just think that it's not the type of
21 behavior that really the guidelines intended to cover as far as
22 intent and threat and so forth, so I'd ask the Court to sustain
23 the objection.

24 THE COURT: All right. Very well. The Court's ready
25 to -- to rule. If I were teaching the guideline application on

1 3C1.1, this would be the archetypical example of what that
2 guideline is intended to -- to cover. This case -- This
3 enhancement isn't even close. The objection is going to be
4 overruled.

5 Mr. Mazzulla, you did yourself no good by objecting,
6 nitpicking on this enhancement. Fortunately for you, I will be
7 sentencing you on the totality of the record and not on any
8 portion of -- of this enhancement. This was an ill-advised
9 display to have the witnesses come in the courtroom today, but
10 it is what it is. And I'm not being critical of Mr. Damman.
11 He needs to do what he -- what he needs to do.

12 But for the record, the objection will be overruled. My
13 finding is as follows:

14 James Sisneroz' testimony I find to be credible.
15 Mr. Sisneroz on three occasions -- the first one was on
16 April 18 of 2018, the day that he testified in this court, came
17 back, was confronted by the defendant who told him that he
18 lied, that he's now a snitch, that he's a rat.

19 After that, on April 29th of 2018, I don't know whether
20 Troy Mason got jumped or not, and it doesn't make any
21 difference to me. What does make a difference is that this
22 defendant told Mr. Sisneroz that we're going to jump you
23 and get you too. A direct threat that is believed by this
24 court.

25 Then two weeks ago on July 18th of 2018, Sisneroz comes

1 back from CCA, once again he's confronted by the defendant.
2 Hey, bitch, snitch. If those aren't considered to be threats,
3 I don't know what they are.

4 Then this morning, the day of the testimony, today, the
5 defendant confronts Sisneroz and says this is where -- this is
6 where rats are held. The guy's a snitch.

7 Shawndell Burke testifies, and my concern is her
8 testimony in particular on the van ride up here, and god knows
9 why any of these individuals were in the same van with
10 Mr. Mazzulla, but, anyway, Mr. Mazzulla -- at that time her
11 testimony was that -- and actually the defendant confirmed
12 that -- he gets in, greets them with a "hello, ladies", calls
13 them bitches or whatever name -- there were three different
14 descriptions of what he called them, but they all agreed it
15 was -- it was negative.

16 The defendant wanted them to in his view -- I mean, he's
17 saying tell the truth, tell his version of the truth. Wanted
18 the weights to be different than what they'd testified to,
19 wanted Miss Schwab to testify in a -- in another way.

20 Now, I understand what the defendant is saying, that I
21 didn't give direct hand-to-hand methamphetamine exchange.
22 That's not what the law is and that doesn't make any
23 difference. There's no question what he was wanting Michelle
24 Schwab to do.

25 Then Michelle Schwab testifies again about the van ride,

1 described it, July 14 of 2018. Gets in the van, calls them
2 bitches, you lied, tell the truth, show me your boobs, all of
3 those things as -- as the van ride initiates.

4 Miss Schwab testified that she wanted him to change her --
5 she wanted -- he wanted her to change the testimony at least
6 to, in her words in quotes, his version of the truth. She
7 testified that she did tell the truth at -- at trial. I find
8 her testimony to be credible.

9 I'm not putting any stock on the pulling the hair and the
10 drowning in Mexico comments. That doesn't make any difference
11 to me. I'm -- I'm relying upon the other comments that I'm
12 relying to specifically.

13 So long story short, the objection to 3C1.1, obstruction
14 of justice, is overruled and the two-point enhancement will
15 apply.

16 Okay. I believe I've ruled on all of the objections.

17 I will say this before we go to sentence. Even if I were
18 to sustain each one of the defendant's objections and the
19 defendant's total offense level of 34 and the criminal history
20 category is VI, that leads to a guideline sentencing range of
21 262 to 327 months.

22 Now, I want everybody to know that I will be imposing the
23 sentence that I impose pursuant to the Section 3553(a) factors
24 and the totalities of the circumstances that I heard at trial
25 and observed in the presentence report, at least those that are

1 not objected to.

2 And I am calculating the guidelines because I have to.
3 All right? I'm calculating the guidelines to have an
4 appropriate advisory guideline starting point, but I want to be
5 clear, I would be imposing the same sentence today regardless
6 of the rulings I just made on the guideline enhancements. I
7 made the rulings because I have to, and they'll be a starting
8 point, but I'd be imposing the same sentence regardless of any
9 of those rulings.

10 So, in other words, whether there's a total offense level
11 of 34 with a criminal history category VI or whether it's an
12 offense level of 36 or 38, frankly makes no difference to me.
13 All right?

14 So with that -- with that said, I take it both parties
15 would like me to adopt the remainder of the PSR that either has
16 not been objected to or has been ruled upon?

17 MS. FULLERTON: Yes, Your Honor.

18 MR. DAMMAN: Yes, Your Honor.

19 THE COURT: All right. I will do so.

20 Have each of you received the Sentencing Recommendation
21 dated July 23 of 2018?

22 MS. FULLERTON: Yes, Your Honor.

23 MR. DAMMAN: Yes, Your Honor.

24 THE COURT: All right. Let me go over the guideline
25 calculations with you, Mr. Mazzulla. With my rulings, the

1 total offense level is now 38 and the criminal history category
2 is VI. The guideline custody range for Counts I and V is 360
3 months to life and for Count II is 360 to 480 months.

4 The guideline provision for supervised release for Count I
5 is five years, and for Count II it's four to five years,
6 Count V it's five years.

7 You're not eligible for probation.

8 The fine range is 50,000 to \$10 million on all counts and
9 there'll be a special assessment of \$100 assessed on each count
10 for a total assessment -- special assessment of \$300.

11 Have I accurately stated the sentencing guidelines given
12 my rulings?

13 MS. FULLERTON: Yes, Your Honor.

14 MR. DAMMAN: Yes, Your Honor.

15 THE COURT: All right. Very well. Are both of you
16 now prepared to proceed to sentencing?

17 MS. FULLERTON: Yes, Your Honor.

18 MR. DAMMAN: Yes, Your Honor.

19 THE COURT: I'll hear from the government first.

20 MS. FULLERTON: Your Honor, based on all the
21 evidence, including the testimony presented today, I would ask
22 the Court to sentence the defendant to 30 years.

23 THE COURT: Very well. Thank you, counsel.

24 I'll hear from you.

25 MR. DAMMAN: Yes, Your Honor.

1 I -- Your Honor, I'd like the Court to pay particular
2 attention to two of the 3553(a) factors. And first of all,
3 3553(a)(2)(C), which is the need for the sentence to protect
4 the public from further crimes and -- of the defendant.

5 Mr. Mazzulla's 58 years old. If you were to sentence him
6 to 30 years in prison, he would be basically in his mid 80s,
7 around 80, I suppose, when he would be released. I don't think
8 we need to protect the public from an 80-year-old man. I -- I
9 doubt that the Court's ever had an 80 or even a
10 70-some-year-old man before it on a -- on any kind of similar
11 offense. I don't think --

12 THE COURT: Yeah, actually, I have.

13 MR. DAMMAN: Well, I would say it's probably rare,
14 though. I think this is a 20- to 30-year-old man's game but --

15 THE COURT: I wish it were.

16 MR. DAMMAN: Well, I -- I guess I -- I don't pretend
17 to know every single case you've had, Your Honor, but I'm just
18 suggesting that it --

19 THE COURT: I understand.

20 MR. DAMMAN: -- it may or -- it may be significantly
21 longer than what we need to protect the public from
22 Mr. Mazzulla. Even if it would be a 15- to 20-year sentence,
23 we're looking at somebody who'd be in their mid 70s, so I -- I
24 would, of course, ask the Court to consider that.

25 And then 3553(a)(6) addresses the need to avoid

1 unwanted -- or sentencing disparities, unwarranted sentencing
2 disparities. And I realize that that deals with similarly
3 situated defendants when you start to color match and compare
4 cases.

5 However, I think there's precedent for not foreclosing a
6 sentence adjustment based upon that subsection even when
7 someone doesn't cooperate and you're comparing him to others
8 who did. And in *U.S. v. Amaya*, 949 F.Supp.2d 895, it's an Iowa
9 case from 2013, defendant -- the guidelines suggested or
10 advised 360 months. Defendant was sentenced to 180 months, and
11 the reason was that when the Court -- even though the defendant
12 hadn't cooperated and the co-defendants had, the Court found
13 that due to the significant differences in the sentences
14 compared to the co-defendant that it was warranted to impose a
15 lesser sentence, and so I think we have a similar situation.

16 We have other co-defendants that I think the --
17 Mr. Sisneroz had about a 19-year sentence, Ms. Burke 14 years,
18 Ms. Schwab 10 years, Ms. Nemeiksis 5 years, 10 months; but they
19 all cooperated. And so I think it's reasonable to expect that,
20 especially given the fact they testified, they're probably
21 looking at single digits in years compared to what -- it would
22 be a 30-year sentence. That's quite a difference among the
23 people involved in this.

24 So I would ask the Court to consider all -- not only those
25 two factors but all of them and a sentence of significantly

1 less than the 360 months.

2 THE COURT: All right. Very well. Thank you,
3 counsel.

4 Mr. Mazzulla, at this time you do not have to speak, you
5 don't have to say anything if you wish, but now is the time for
6 you to address me if you wish to say something before I
7 pronounce sentence.

8 THE DEFENDANT: Your Honor, I want to apologize for
9 my anger. I do have a issue with my anger when I feel like
10 I've been cheated and lied about and I feel that's what's
11 happened here.

12 I wanted to take the stand and testify, if you remember,
13 during trial. I spoke to you briefly about that and you told
14 me to speak with my attorney. I was convinced not to take the
15 stand. I don't know whether it was bad or -- or good that I
16 didn't.

17 I do know this, that people lied and there's no way that
18 I -- I could confront them lies without taking the stand. I
19 tried to do that here. I understand we're not retrying the
20 case here.

21 But it just seems like to me without me saying something,
22 well, then people like Michael Dryden, that I've never even
23 knew before, got up on the stand and said bad things about me,
24 said that I had dope deals with him. I don't even know him,
25 never seen him before until April 22nd when we was in the same

1 jail cell in Lincoln is the first time I ever seen the man.

2 When I walked in that courtroom, I didn't even know -- I
3 didn't even know who he was then until I seen him again, and I
4 said, "Oh, yeah, there's that guy. I remember him from jail."
5 I don't know him from the streets. I never met him at
6 Shawndell's house. I never met him up in Omaha. It didn't
7 happen. Absolutely did not happen.

8 If you read the -- and I'm going to be quick about this.
9 I'm not going to get into it, but if you read the proffered
10 statements that each and every one of them give, they
11 contradict [sic] theirselves and they tell the truth.

12 And you can see where Joe Burns was supposed to have -- he
13 proffered on me too, but he didn't show up for court. He put
14 hundreds of pounds on me too. He didn't show up for court so
15 they didn't use his testimony because Shawndell Burke told the
16 prosecutor during her proffer that I didn't know Joe Burns,
17 okay.

18 Michael Dryden said that he met me at Shawndell's house
19 and I sold him an ounce of dope. Well, if you look at the
20 proffer, Joe Burns didn't know Shawndell during the time that
21 Michael Dryden said that he was at her house. They didn't know
22 each other yet. They didn't meet until the middle of December
23 and so it's -- it couldn't have happened.

24 It just -- it tells the truth. The proffers tell the
25 truth if you read through them. And so that's why I get so

1 angry is because the truth wasn't told, and -- and I -- I
2 didn't have a chance to even try to -- to tell the truth, and
3 that's -- that's why I'm angry, you know.

4 I just think there's been a lot -- a lot of wrong that --
5 and I'm not blaming you. I -- I just -- and I'm not blaming my
6 attorney, even though I do get mad at him. It's just the way
7 things -- I was blindsided. I did not know that they could get
8 up on the stand, narrate a story, never get objected to and
9 tell such lies that weren't true without some type of
10 corroboration.

11 None of the stories corroborate each other. None of them.
12 Nobody says the same exact same. And I just don't understand
13 how a person can be convicted like that.

14 And so, therefore, I think there's prosecutor misconduct.
15 I think Miss Fullerton coached Shawndell throughout her
16 proffer. It was obvious when she got on the stand.
17 Miss Fullerton coached her through, and it all sounded pretty
18 good until my attorney cross-examined her, and then she got
19 lost, she didn't know what she was talking about because it was
20 all made-up lies.

21 Shawndell told me on the way up here -- I know you don't
22 believe this, but she told me on the way up here that
23 Miss Fullerton wanted her to say that she lived in the garage
24 with me.

25 Well, I believe that during the trial she did say that at

1 the first, but then at the end she counterdicted [sic] herself
2 and said, no, she never did live there. So, you know, there's
3 just lots of things that -- that if you was to know the truth,
4 you could spot the truth, and -- and you could spot the lies
5 easily.

6 But when you got five people up there making up stories
7 and -- and nobody objects to it, I don't know how -- how the
8 truth's ever going to come out. You know, nobody got the
9 chance to object. The jury heard all that and believed every
10 word of it because nobody said "objection", nobody said "that's
11 not true", and that's the reason I wish I would have took the
12 stand.

13 THE COURT: All right. I hear you there. Is there
14 anything you want to tell me about what your sentence should
15 be?

16 THE DEFENDANT: Yeah. Send me home. That's what I'd
17 like to tell you, but I know that won't happen. So, you know,
18 do what you got to do I guess is what I'm saying.

19 THE COURT: All right. All right. Very well.

20 THE DEFENDANT: But just take in consideration all
21 that.

22 THE COURT: I'm taking into consideration --

23 THE WITNESS: They all --

24 THE COURT: -- everything I saw --

25 THE DEFENDANT: They all --

1 THE COURT: -- and heard --

2 THE DEFENDANT: -- get up on the stand and lie like
3 that because they know they're going to get a break so why
4 wouldn't they tell the biggest lies ever?

5 THE COURT: All right. I've heard everything.

6 Counsel, is there any reason that sentence should not now
7 be pronounced?

8 MS. FULLERTON: No, Your Honor.

9 MR. DAMMAN: No, Your Honor.

10 THE COURT: All right. Very well. Well,
11 Mr. Mazzulla, I have considered and reviewed all of the
12 statutory 3553(a) factors for sentencing, including the
13 unnecessary sentencing disparities. I've considered all of the
14 factors. Your role in this particular crime as well as your
15 individual history, your characteristics. I'm not going to
16 give you a lengthy lecture. This is -- this is not your first
17 rodeo.

18 You exercised your right to trial by a jury of your peers
19 and you were found guilty on -- on three counts based on the
20 evidence that was adduced in this courtroom and so here we are.

21 The sentence I'm about to pronounce in this case reflects
22 the -- the nature of this crime, the -- the amount of time that
23 was involved in this particular crime, the number of people
24 that were affected by the sales of -- of the methamphetamine,
25 but I also am considering -- when I say the nature of the

1 crime, you were not a drug kingpin from -- from Mexico living
2 in a \$900,000 home, so I'm considering all of that in my
3 sentencing determination.

4 I'm considering your -- your prior record which quite
5 frankly is atrocious. It includes multiple drugs, weapon
6 offenses, terroristic threats, basically, the -- the Trifecta,
7 but I am considering that. And the need to promote respect for
8 the law.

9 Now, while you are in prison, I will give you the
10 opportunity to participate in something gainful if you wish to
11 do so, so an educational or vocational program as well as the
12 drug treatment program. That's known as RDAP.

13 There was a period of time, and I read all about it, where
14 you were at the -- the Berean church in a program, and so you
15 were participating in a sober lifestyle at one point in time,
16 and I'm going to give you the opportunity for RDAP in this
17 particular sentencing.

18 But now to the sentence. To reflect the seriousness of
19 the offense, to promote respect for the law and to provide just
20 punishment for this particular offense, recognizing that the
21 guidelines are advisory in nature, and considering all of the
22 sentencing -- the statutory goals for sentencing, and in many
23 ways in spite of yourself, I hereby sentence the defendant,
24 Rodney P. Mazzulla, to a term of 312 months as to all counts,
25 to be served concurrently all with each other.

1 Because of your history of substantial drug abuse, I am
2 going to recommend to the Bureau of Prisons that you
3 participate in the 500-hour intensive drug treatment program or
4 any similar and available drug treatment program.

5 I will recommend to the Bureau of Prisons that you be
6 incarcerated in a federal facility -- I assume as close to
7 Lincoln, Nebraska, counsel?

8 MR. DAMMAN: He'd like the Court to recommend
9 Florence, Colorado.

10 THE COURT: All right. I will make that
11 recommendation. As you know our -- the Bureau of Prisons will
12 classify you and place you as appropriate. I will make the
13 recommendation for Florence, Colorado.

14 I'll also recommend to the Bureau of Prisons that you be
15 provided an opportunity to obtain further educational or
16 vocational training appropriate to your current education or
17 skill level.

18 You'll be placed on five years of supervised release on
19 all counts, to be served concurrently with each other count,
20 when you're released from prison and I intend to follow the
21 special conditions of supervised release set out in the
22 Sentencing Recommendation.

23 Counsel, do you have any objection to those?

24 MS. FULLERTON: No, Your Honor.

25 MR. DAMMAN: No, Your Honor.

1 THE COURT: All right. The special conditions of
2 supervised release set out in the Sentencing Recommendation are
3 therefore imposed as well as the standard conditions.

4 I'm not going to impose a fine because the defendant
5 cannot pay one and is not expected to be able to pay one in the
6 foreseeable future.

7 A \$100 special assessment will be imposed on each count
8 for a total \$300 special assessment.

9 And the defendant should be given -- just a moment.
10 Mr. Mazzulla shall be given credit for time served and I
11 believe he's been detained since April 22 of 2017.

12 MR. DAMMAN: That's correct.

13 THE COURT: All right. And he should receive credit
14 for that time served.

15 And if not already done so, he shall cooperate in the
16 collection of a DNA sample at the direction of the Bureau of
17 Prisons.

18 Now, in crafting this order, I have considered all factors
19 in determining that this sentence should be sufficient but not
20 greater than necessary to comply with the purposes of Section
21 3553(a).

22 That is my judgment and sentence.

23 Counsel, do either one of you have any questions or wish
24 any further elaboration of my Statement of Reasons?

25 MS. FULLERTON: No, Your Honor.

1 MR. DAMMAN: No, Your Honor.

2 THE COURT: Very well. Mr. Mazzulla, you have a
3 right to appeal this matter to a higher court and you have 14
4 days in which to file an appeal. If you wish to do so, you
5 should talk with your lawyer or you can file it on your own
6 behalf, but you have 14 days in which to file an appeal.

7 In just a moment, my courtroom deputy's going to give you
8 a sheet of paper that sets forth your appeal rights, but they
9 are what I just told you. You have 14 days to appeal the --
10 the trial verdict, any of my judgments or the sentencing in
11 this particular matter.

12 Do you have any questions about your right to appeal or
13 the procedures involved?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. Very well. Are there any
16 questions or any other matters that need to be taken up?

17 MS. FULLERTON: No, Your Honor.

18 MR. DAMMAN: No, Your Honor.

19 THE COURT: All right. Very well. If not, the
20 defendant is remanded to the custody of the United States
21 Marshal for service of sentence.

22 And we'll stand adjourned.

23 Marshal, if you will pass on to the transporter, I do not
24 want this defendant being transported, wherever he's being
25 transported, with any of the witnesses that testified.

1 DEPUTY MARSHAL: Will do, Judge.

2 THE COURT: Is that clear to everyone? Thank you.

3 We stand adjourned.

4 (Adjourned at 12:36 p.m.)

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9

10 I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

11

12 /s/Rogene S. Schroder
Rogene S. Schroder, RDR, CRR

September 12, 2018
Date

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I-N-D-E-X

Direct Cross Redirect Recross

WITNESSES:FOR THE PLAINTIFF:

James Sisneroz	19	22	30	
Shawndell Burke	33	41	49	50
Michelle Schwab	52	56	60	

WITNESSES:FOR THE DEFENDANT:

Rodney P. Mazzulla	62			
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EXHIBITS:OfferedRuling

59. Evidentiary Basis Table	4	5
60. Saline County Incident Report, 11/16/17	16	17
61. U.S. Marshal Service Report of Investigation, 4/12/18	16	17
62. Saline County Incident Report, 4/18/18	16	17
63. Saline County Incident Report, 4/18/18	16	17
64. Saline County Incident Report, 4/29/18	16	17